DAUD MAMAT

v.

NIK YUSOFF NIK SULAIMAN

HIGH COURT MALAYA, KOTA BHARU
MOHD. ZAHIR ISMAIL J
[CIVIL APPEAL NO. 15 OF 1980]
27 JULY 1981

CIVIL PROCEDURE: *Appeal - Evidence - No prima facie evidence adduced by affidavit - Question not to be decided on the pleadings alone - Whole proceedings - Claim for recovery of immovable properties - Jurisdiction of Magistrate to hear and determine case - Section 70(4), 71, 93(1) of Subordinate Courts Act 1948.*

The appellant appealed against the decision of the Magistrate in which the appellant (the defendant) in the Civil Action, was ordered to deliver up vacant possession of the land in dispute. The appellant appealed further against the decision of the learned Judge which confirmed the order of the magistrate.

The respondent claimed possession of a piece of land and a plank house thereon which he claimed to be his. The appellant claimed that the properties were once held by his son, Ismail, in trust for him and that his son in collusion with the respondent who knew of the trust fraudulently had the properties transfered to the respondent. He counter-claimed to have the transfer from his son to the respondent be declared null and void.

From the defence there appeared to be a dispute in title in the claim. The learned Magistrate heard the case without sending up the case to the High Court to ascertain whether there was indeed a *bona fide* evidence of dispute in title or whether it was a sham defence to delay the right and interest of the plaintiff.

The learned Magistrate found that the defence was a sham one and declared that he had jurisdiction to adjudicate.

Held:

[1] It is a requirement of the law that there should be a *bona fide* evidence of dispute in title. It is not expected of the Magistrate to automatically transfer the case to the High Court when dispute in title is pleaded.

[2] There was no evidence of trusteeship established between the appellant and his son nor between his mother.

[3] The question as to whether there is a *bona fide* question of title involved is not to be decided on the pleadings but on the proceedings as a whole.

[4] The learned Magistrate was right in not sending up the case to the High Court right away and instead decided to ascertain whether there was indeed a *bona fide* evidence of dispute in title or whether it was a sham defence in order to delay the right and interest of the plaintiff/respondent.

[5] There was no evidence of *bona fide* dispute in title adduced by the appellant; the learned Magistrate was right in giving judgment in favour of the respondent. The appellant could have adduced a *prima facie* evidence of dispute in title by affidavit before the Magistrate but he had not done so.

[The appellant's appeal was dismissed.]

For appellant - Datuk Wan Mustapha
For respondent - Mr. P. Dorairaj

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Also found at [1981] CLJ 92